

Real Estate Practice

Belgium

January 2020



About AKD

AKD is a leading Benelux law firm. With a team of over 450 committed attorneys, civil-law notaries, tax consultants and staff, AKD delivers high-quality and fully integrated international legal and tax services in nearly all legal fields, based on a full-service approach. Our client base varies from listed entities to privately held multinational companies, from large corporates to family owned businesses and high-net-worth individuals, from financial institutions to public authorities.

With six offices in Belgium, the Netherlands, and Luxembourg, AKD is the independent legal and tax adviser for anyone doing business involving the Benelux countries. Outside the Benelux, AKD teams up with an extensive network of highly reputable law firms to form integrated teams that comprehensively assist our clients in doing business around the globe.

About AKD Brussels

AKD Brussels has been assisting clients in Belgium for over 20 years. The Brussels office is home to our Belgian law practice, as well as to our EU law practice. Our Belgian law practice focuses on corporate, real estate, tax and IP/IT law issues and covers transactional, advisory and litigation services. Our EU law practice focuses on competition law, state aid, procurement and EU regulatory law. Our Brussels-based lawyers are all fluent in two or more languages, including English, Dutch, French, German, Spanish, Arabic and Hindu/Urdu.

About AKD's Belgian Real Estate Practice

AKD's Belgian real estate team provides assistance in virtually all aspects of real estate law, from development and construction, to acquisition, sales and leases, including project finance. We act for owners, landlords, tenants, contractors, developers and banks. We regularly represent clients in the various segments of the Belgian real estate market (all three Regions) including offices, retail, residential property and logistics/ industrial sites.

Our lawyers ("advocaten"/"avocats") act as a natural extension of the client's legal department, development department or management team. Since the 2014 edition, the Legal 500 EMEA directory has systematically recommended one or more lawyers of AKD Brussels for the section "Real Estate". The current team of our Belgian real estate lawyers is presented at the end of this brochure and is headed by Steven Ongena.

Our five main focus areas are set out below. For each area, we have listed a number of representative matters, reflecting the experience of AKD's real estate lawyers.

Acquisitions and Disposals

For many years, AKD's lawyers have regularly represented and assisted Belgian and foreign parties in the acquisition or disposal of real estate located in Belgium. The completed transactions use a variety of structures ranging from a transfer of full title, assignment of residual ownership rights or other rights "in rem", and from sale-and-lease-back transactions to share transfers of real estate holding companies.

Selected Representative Matters

- Representing a UK-based AIM-listed real estate company in the acquisition of the long-lease rights of a landmark research centre with laboratories, research facilities and offices situated near the University of Louvain-la-Neuve (Walloon Region). Under a separate agreement, AKD's lawyers also represented the assignee and beneficiary of the residual ownership rights to the same research centre
- Representing a UK public limited real estate company specialising in ethical investments in a due diligence investigation and in the subsequent acquisition of an office building in the centre of Brussels by means of a share transfer
- Representing a global car rental company in negotiations on a long-term immovable VAT leasing agreement regarding built-to-suit premises to be erected on four plots of land (approx. 15,000 m²) near Brussels Airport (Flemish Region). The agreement was transacted within the framework of the consolidation of four Brussels locations into a single multi-purpose building (including the client's Belgian headquarters)
- Representing a Belgian SME in the sale and (sub-)lease agreement relating to its head office and production facility, previously built under a VAT leasing agreement near Antwerp (Flemish Region)
- Representing the title-holder of long-lease rights to the IT Tower (a landmark office building in Brussels) in the assignment of those rights to a foreign investor
- Representing the acquirer of long-lease rights to the Astro Tower (another landmark office building in Brussels) in the assignment of those rights
- Representing a US-based industrial conglomerate on the phased sale of a production facility to a local developer with a limited leaseback (Flemish Region)
- Representing a semiconductor manufacturer with headquarters in Japan in the acquisition in full ownership of a large plot of land in Leuven (Flemish Region) for the extension of the client's existing production facilities

Acting for Landlords and End Users

AKD's Belgian real estate team represents and assists landlords and end users in the negotiation, renewal, assignment and termination of their office leases, retail leases (including subleases), warehouse leases, public concessions and long leases.

Our Belgian real estate practice focuses on relocation projects often involving clients moving their headquarters or production facilities. Clients include large corporations and public authorities (both local and foreign – see below). Many transactions incorporate a construction component as they relate to premises yet to be developed at the time of contracting.

Our real estate practice includes some of the world's best-known international retailers and covers a broad variety of industries: clothing, cosmetics, food & beverage, automobile and more. The practice captures the entire life cycle of retail leases, from (i) opening sales points (through greenfield leases, lease assignments, retail business assignments including leases); (ii) renewing leases; and (iii) closing sales points. Our services are mainly transactional and/or advisory but we equally litigate for our clients before the Belgian Courts. Such contentious cases typically relate to lease renewal processes or unamicable exits – see below.

For our industrial clients, we focus on protecting their interests in the event of (potential) soil contamination. Our services extend to securing the issuance, transfer and renewal of environmental permits.

Selected Representative Matters

- Representing a national health insurer in the assignment of long lease rights relating to a jointly operated IT facility in Brussels in favour of a co-long lessee holding a majority stake in that facility
- Assisting a Belgian developer in preparing the contractual lease documentation for offices and retail premises
- Representing a foreign lobby organisation to the EU institutions in negotiations for two parallel office and parking leases in Brussels' EU district



- Representing a US-based industrial conglomerate in negotiations for and the conclusion of an office lease for a building under construction located in the Flemish Region
- Representing a California-based electric vehicle manufacturer in negotiations for and the conclusion of retail leases for its service centres in Brussels, Antwerp and Ghent
- Representing a leading UK fast-fashion retailer in negotiations for and the conclusion of an 18-year retail lease for premises at the rue Neuve in Brussels
- Representing a US-based global premium-clothing retailer in negotiations for and the conclusion of an 18-year retail lease for its European flagship store at the Meir in Antwerp (Flemish Region)
- Assisting several international retailers in analysing their retail lease portfolios in order to determine break options, renewal time windows, etc.
- Assisting a licensed ground handler at Brussels Airport with airside access in analysing its environmental permits related to the various ground concessions entered into (Flemish Region)

Governmental Practice

Lawyers at AKD Brussels regularly assist and represent Belgian and foreign public authorities in high-profile Belgian real estate matters.

Selected Representative Matters

- Representing the Belgian authorities in negotiations for a Design Build Finance and Maintain Agreement with the European Union and Euratom. Under the terms of the agreement, the Belgian state commits to renovate a Brussels landmark building in the European quarters with a view to housing the official seat of the European Council, now known as the "Europa Building". We assisted our client in the contract negotiations, which were conducted through a phased process starting with a Memorandum of Understanding and leading to a final agreement (2005-2008). The Belgian authorities also retained us to assist in securing practical completion of the project, which was obtained in 2016. Further to practical completion, we assisted our client in resolving a number of complex disputes and negotiations with the European Union and Euratom relating to matters such as the calculation of the final investment cost and sales price and the time of practical completion. The project's capital expenditure is in excess of EUR 240,000,000
- Representing the Belgian authorities in organising an auction, which led to the assignment to a private investor of residual ownership rights relating to the Ghent Court House, built by a private partner under a separate promotion agreement. The project value is in the range of EUR 150,000,000
- Representing the Canadian State in a large relocation project relating to its diplomatic missions to Belgium and to the European Union. The transaction included the conclusion of a long-term usufruct agreement with AG Insurance regarding premises of 3,500 m² in a 17,000 m² property in Brussels' central business district
- Representing a foreign federated entity in (i) the full ownership acquisition of a permanent mission in Brussels, (ii) the thorough refurbishment of this mission, (iii) the subsequent lease termination of the mission's prior office lease, and (iv) the subsequent sale of the head of mission's official residence
- Assisting an EU Member State in the legal analysis of the confines of its embassy building in Brussels and determine the repair and maintenance obligations in relation thereto

Tax

AKD's Brussels tax practice deals with all Belgian (national and cross-border) tax aspects of real estate transactions and investments, including:

- Value Added Tax (VAT) and/or transfer taxes on the acquisition of real estate or certain rights on real estate (long lease, usufruct, operational lease, finance lease, etc.)
- Real estate property tax
- Income tax on all types of real estate income, such as lease rentals, payments for the right of usufruct or long lease, etc., for the payer as well as for the payee
- Treatment of any type of real estate income or gain in cross-border situations, regardless of whether the real estate is part of the taxpayer's permanent establishment in Belgium
- Local taxes imposed on real estate or income derived from real estate, and
- Stamp taxes (or other indirect taxes) on the establishment or transfer of mortgages or other forms of security on real estate

Selected Representative Matters

- Advising and assisting one of the largest US investment funds in connection with the acquisition and financing of a cluster of new office buildings just off the Brussels ring road
- Advising and assisting a privately owned life insurance company on the acquisition of approximately 66 percent of the shares of a listed real estate company and the subsequent re-structuring of its portfolio of real estate assets
- Advising and assisting an Irish investment group in connection with the re-financing of its portfolio of Belgian office buildings when the rental income dropped steeply in the wake of the 2008 financial crisis
- Advising one of the largest UK real estate investment groups on the disposal of a number of Belgian properties, following the group's decision to divest its Belgian portfolio

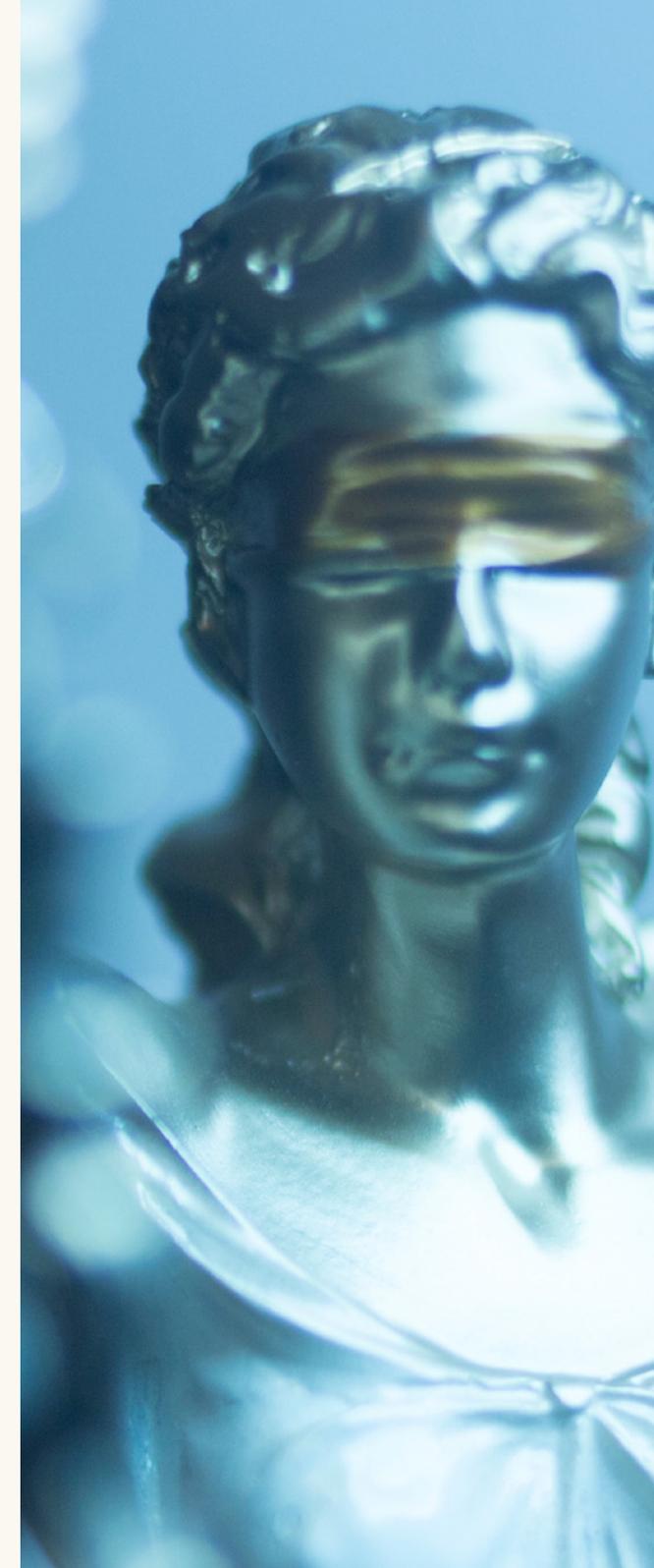
- Advising a British-Australian infrastructure finance and investment group in connection with the transfer of the group's interest in a public infrastructure project in Flanders to the largest real estate investment company in Belgium
- Advising a foreign investor acquiring a large logistic site (warehouse and trucks) in Flanders as part of the acquisition of a French real estate investment group, which held the Flemish site in its portfolio
- Advising the specialised investment arm of a Belgian insurance company on several acquisitions of solar parks, mostly located on the roofs of industrial, logistical or office buildings located all over Belgium
- Advising on the VAT aspects of large infrastructure projects in Belgium, including the "Oosterweel" project (closing of the northern part of the Antwerp ring road in order to mitigate congestion of the Kennedy tunnel on the city's south side)
- Assisting a US-resident private investor in the sale of a prestigious commercial property in the commercial centre of Liège (Walloon Region)
- Advising a privately owned investment company on setting up a cooperative investment fund to raise capital for investment in offshore wind parks off the Belgian coast
- Successfully representing a major hotel in Ghent before the Ghent Court of Appeal and, subsequently, before the Court of Cassation against the City of Ghent in connection with a city tax on hotel rooms

Litigation

AKD lawyers regularly act on behalf of landlords and tenants in real estate related disputes. In addition to settling matters out of court, we deal with contentious matters before the Belgian Courts, including expert missions.

Selected Representative Matters

- Enforcement of creditors' rights in the lender/borrower relationship and in the landlord/tenant relationship
- Technical disputes over building performance and over the scope of repair & maintenance obligations
- Disputes over the termination, the renewal or the non-renewal of leases, including the quantum of damages
- Disputes over the current rental value of leased premises as part of the lease renewal process, having acted both on the landlord side and on the tenant side



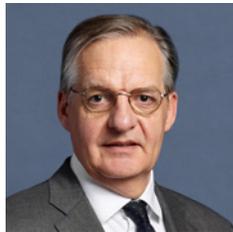
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